

## **Chapter 1**

### **Introduction**

#### **1-1. Historical Background**

Military service often compromises the ability of servicemembers to fulfill their financial obligations and to assert many of their legal rights. Fortunately, Congress and state legislatures have long recognized the need for responsive, protective legislation.

During the Civil War, Congress enacted legislation suspending any statute of limitations where the war worked to thwart the administration of justice.<sup>1</sup> In World War I, the Soldiers' and Sailors' Civil Relief Act of 1918<sup>2</sup> directed trial courts to take whatever action equity required when servicemembers' rights were involved in a controversy.

A modern version of these laws, the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA),<sup>3</sup> was penned on the eve of World War II. Based on the 1918 legislation, the Act provided for stays in civil proceedings,<sup>4</sup> interest rate reduction,<sup>5</sup> protection against double taxation,<sup>6</sup> and other types of relief.

Experience during World War II and subsequent armed conflicts led to changes, but the law's basic intent – allowing military personnel to give full attention to their military duties – remained clear. As the Supreme Court has said, this legislation benefits “those who dropped their affairs to answer their country's call.”<sup>7</sup>

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<sup>1</sup> Act of June 11, 1864, ch. 118, 13 Stat. 123. *See also* A. H. Fuller, *Moratory Legislation: A Comparative Study*, 46 HARV. L. REV. 1061 (1933) (brief historical examination). In addition to the Federal legislation, many states enacted various types of protective measures. *Id.* at 1085. *See also* WILLIAM M. ROBINSON, JR., *JUSTICE IN GREY: A HISTORY OF THE JUDICIAL SYSTEM OF THE CONFEDERATE STATES OF AMERICA* 83-8 (1941).

<sup>2</sup> Act of Mar. 8, 1918, ch. 20, 40 Stat. 440.

<sup>3</sup> Act of Oct. 17, 1940, ch. 888, 54 Stat. 1178.

<sup>4</sup> 50 U.S.C.S App. § 522 (LEXIS 2006) (providing that stays of civil proceedings when servicemember has notice of the proceeding).

<sup>5</sup> *See id.* § 527.

<sup>6</sup> *See id.* § 571.

<sup>7</sup> *LeMaistre v. Leffers*, 333 U.S. 1, 6 (1948). For a discussion of some of the early legislative changes and experience, *see* Robert H. Skilton, *The Soldiers' and Sailors' Civil Relief Act of 1940 and the Amendments of 1942*, 91 U. PA. L. REV. 177 (1942).

In 2002, Congress began taking a renewed interest in this legislation. During the 107<sup>th</sup> Congress, the Act was extended to members of the National Guard during certain periods of active duty performed under Title 32 of the U.S. Code.<sup>8</sup> Next, in late 2003, Congress passed sweeping, modernizing legislation when it adopted the Servicemembers Civil Relief Act (SCRA).<sup>9</sup> Finally, in late 2004, Congress fine-tuned the SCRA.<sup>10</sup>

The SCRA strengthens, clarifies, and modernizes the older SSCRA. While there are significant changes, most key concepts, protections, and benefits remain. Thus, much of the older case law – examined in this volume – is as relevant as ever.

## **1-2. The Act's Purposes, Scope, and Constitutionality**

The SCRA provides a number of benefits and protections to service personnel. For example, it calls for the reduction of interest on debts to six percent for those debts entered into before entry on active duty.<sup>11</sup> Other provisions toll statutes of limitations<sup>12</sup> and stay civil proceedings.<sup>13</sup> The Act's stated, broad purpose, found in section 502 of the appendix to Title 50 of the United States Code, gives added meaning to these specific rights.

The purposes of this Act are----

(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

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<sup>8</sup> Veterans Benefits Improvement Act of 2002, Pub. L. No. 107-330 § 305, 2002 U.S.C.C.A.N. (116 Stat.) 2820, 2826-7 (codified at 50 U.S.C. App. § 511(1)). *See also* Lieutenant Colonel J Thomas Parker, *Soldiers' and Sailors' Civil Relief Act Now Applicable to the National Guard . . . Sort Of*, ARMY LAW., June 2003, at 17.

<sup>9</sup> Pub. L. No. 108-189, 117 Stat. 2835 (2003) (codified at 50 U.S.C.S. app. §§ 501-596 (LEXIS 2006)).

<sup>10</sup> *See* Veterans Benefits Improvement Act of 2004, Pub. L. No. 108-454, 118 Stat. 3598.

<sup>11</sup> 50 U.S.C.S. App. § 527 (LEXIS 2006).

<sup>12</sup> *Id.* app. § 526.

<sup>13</sup> *Id.* app. § 522 (stays where servicemember has notice). *See also id.* app. § 521 (default judgment procedures and stays where servicemember lacks notice of the proceeding).

(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.<sup>14</sup>

While not fostering any substantive or procedural right, section 502 serves as a guide for courts construing the Act. A majority of Federal and state courts construed the predecessor legislation and the 1918 version in a manner consistent with the Supreme Court's declaration that the Act be "liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."<sup>15</sup>

Although the Act benefits service personnel, it does not protect those who would abuse it. For instance, the Act "may not be employed to enable one who had flouted his obligations in civilian life to obtain indefinite delay or to cancel his just liabilities."<sup>16</sup> On the other hand, the Act forgoes protection in those instances where an "interest, property, or contract" has been transferred merely to take advantage of the Act.<sup>17</sup> Other cases have even noted that the Soldiers' and Sailors' Civil Relief Act is also designed to protect rights of individuals having causes of action *against* persons in the military service.<sup>18</sup>

The Act is not a panacea, however, for every legal problem of a civil nature a servicemember might face. It will not, for instance, help rescind a contract for the purchase of an automobile or a set of encyclopedias entered into after entry onto active duty. It is applicable to civil and administrative proceedings, but not to criminal proceedings. It does not excuse a servicemember from his/her obligations, but it will level the playing field so that military personnel are not disadvantaged because of their commitment to our nation.

It may be granted that a continuance will probably operate at least temporarily and perhaps permanently to the disadvantage of the [non-servicemember] plaintiff. That result is unfortunate. But it is a reasonable exaction by society from one of its members for its own preservation; a proper

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<sup>14</sup> *Id.* app. § 502.

<sup>15</sup> *Boone v. Lightner*, 319 U.S. 561, 575 (1943). *See also Plesha v. U.S.*, 227 F.2d 624 (9th Cir. 1955), *aff'd*, 352 U.S. 202 (1957); *United States v. State of Illinois*, 387 F. Supp. 638 (E.D. Ill. 1975); *McCoy v. McSorley*, 119 Ga. App. 603, 168 S.E.2d 202 (1969); *Application of Pickard*, 187 Misc. 400, 60 N.Y.S.2d 506 (Su. Ct. Spec. T. Bronx County 1946); *Murdock v. Murdock*, 526 S.E.2d 241, 247 (S.C. 1999); *Hanson v. Crown Toyota Motors Inc.*, 572 P.2d 380 (Utah 1977).

<sup>16</sup> *Franklin Soc. for Home-Building & Savings v. Flavin*, 265 App. Div. 720, 721, 40 N.Y.S.2d 582, 583, *aff'd*, 291 N.Y. 530, 50 N.E.2d 653, *cert. denied* 320 U.S. 786 (1943).

<sup>17</sup> 50 U.S.C.S. App. § 581. *See also infra* para. 2-8.

<sup>18</sup> *Ricard v. Birch*, 529 F.2d 214 (4th Cir. 1975); *Ray v. Porter*, 464 F.2d 452 (6th Cir. 1972).

imposition by the state upon an individual citizen in the course of its discharge of its constitutional obligation to “provide for the common Defense.”<sup>19</sup>

The earlier protective legislation, the SSCRA, withstood constitutional scrutiny.<sup>20</sup> In *Dameron v. Brodhead*,<sup>21</sup> the Supreme Court found the Act properly based on Congress’ power to “declare war”<sup>22</sup> and its power “to raise and support Armies.”<sup>23</sup> The SCRA should be viewed in the same light. In fact, outcomes should not change with the new legislation.

### **1-3. Notice of Benefits to Persons in and Persons Entering Military Service**

Instruction on the provisions of the Act is required during an early period of military training.<sup>24</sup> Because this instruction is conducted at such an early stage, legal assistance and preventive law<sup>25</sup> programs should be designed to reemphasize the Act on a regular basis. Judge advocates should also endeavor to inform Army recruiters and local bar associations about the Act.

### **1-4. Material Effect**

As a final, introductory matter, it is helpful to pause and consider the concept of material effect. This concept is embodied in many of the Act’s relief provisions. Simply put, regardless of

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<sup>19</sup> *Bowsman v. Peterson*, 45 F. Supp. 741, 744 (D.Neb. 1942).

<sup>20</sup> Following the Civil War, the Supreme Court found that “[t]he power to pass [relief legislation] is necessarily implied from the powers to make war and suppress insurrection.” *Steward v. Kahn*, 78 U.S. (11 Wall.) 493, 507 (1870).

<sup>21</sup> 345 U.S. 322 (1953).

<sup>22</sup> *Id.* at 2 (quoting U.S. CONST. art. I, § 8, cl. 11).

<sup>23</sup> *Id.* at 2 (quoting U.S. CONST. art. I, § 8, cl. 12).

<sup>24</sup> In fact, “[t]he Secretary concerned shall ensure that notice of the benefits accorded by this Act is provided in writing to persons in military service and to persons entering military service. 50 U.S.C.S. app. § 515 (LEXIS 2006).

<sup>25</sup> U.S. DEPT OF ARMY REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM paras. 3-4 and 3-6 (21 Feb. 1996 ); U.S. DEP’T OF AIR FORCE, INSTR. 51-504, LEGAL ASSISTANCE, NOTARY, AND PREVENTIVE LAW PROGRAMS paras. 1.3.1 and 3.2.2 (1 May 1996); U.S. DEP’T OF NAVY, MANUAL OF THE JUDGE ADVOCATE GENERAL ch. VII (3 Oct. 1990).; U.S. DEP’T OF NAVY, JUDGE ADVOCATE GENERAL INSTR. 5801.2, NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM paras. 7-2j and 7-3b(1) (11 Apr. 1997),

the right or obligation at issue, it will often be necessary to determine whether military service has materially affected the servicemember's rights or legal standing.

This notion is best explained through consideration of one of the Act's key provisions. As an example, consider the provision relating to stays of proceedings when the servicemember has notice of the pending civil litigation.<sup>26</sup> When a servicemember makes an application for a stay it must "include . . . [a] letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear."<sup>27</sup>

## **1-5. Purpose and Organization of this Guide**

This publication's main purpose is to provide guidance to legal assistance attorneys. It offers a starting point for legal research useful to military clients needing to assert a claim under the SCRA or those facing claims in an adversarial proceeding.

The SCRA has seven titles:

Title I – General Provisions (50 U.S.C. App. §§ 511-519);  
Title II – General Relief (50 U.S.C. App. §§ 521-527);  
Title III – Rent Installment Contracts, Mortgages, Liens, Assignments,  
Leases (50 U.S.C. App. §§ 531-538);  
Title IV – Life Insurance (50 U.S.C. App. §§ 541-549);  
Title V – Taxes and Public Lands (50 U.S.C. App. §§ 561-571);  
Title VI – Administrative Remedies (50 U.S.C. App. §§ 581-583); and,  
Title VII – Further Relief (50 U.S.C. App. §§ 591-596).

Chapter 2 of this guide delves further into some of the SCRA's fundamental provisions as well as into certain miscellaneous matters. Chapter 3 considers those protections, such as the provision for stays of civil proceedings, which can be thought of as procedural in nature. Chapter 4 turns to protections that can be thought of as substantive. Chapter 5 discusses taxation and voting rights and Chapter 6 describes the Act's financial protections.

Throughout this guide the abbreviation "SCRA," or the terms "Act," or "the Act" refer to the Federal Servicemembers Civil Relief Act, unless otherwise stated. References to individual sections are to the Act as published in the appendix to title 50, United States Code.

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<sup>26</sup> 50 U.S.C.S. App. § 522.

<sup>27</sup> *Id.* § 522(b)(2)(A).